SUPREME COURT U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 327

NICHOLAS MAMULA,

Appellant,

v.

UNITED STEELWORKERS OF AMERICA, an unincorporated labor union, LOCAL 1211, UNITED STEELWORKERS OF AMERICA, LOUIS E. BIEGA, LOUIS DeSENA, MICHAEL ZAHORSKY and DOMINIC IACABUCCI, its officers,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

JURISDICTIONAL STATEMENT

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NICHOLAS MAMULA,

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v.

UNITED STEELWORKERS OF AMERICA, an unincorporated labor union, LOCAL 1211, UNITED STEELWORKERS OF AMERICA, LOUIS E. BIEGA, LOUIS DESENA, MICHAEL ZAHORSKY and DOMINIC IACABUCCI, its officers,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the Pennsylvania Supreme Court entered March 17, 1964, sustaining a judgment of the Court of Common Pleas of Allegheny County, Pennsylvania, denying relief to appellant, and respectfully submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

Opinions Below

The opinion and dissenting opinion of the Pennsylvania Supreme Court are reported in 414 Pa. 294. The opinion of the Allegheny County Court of Common Pleas is not reported. Copies of the Supreme Court Opinions and Order, and the Common Pleas Court's opinion and order are attached hereto as Appendix A.

Jurisdiction

This equity action was lodged in the Court of Common Pleas of Allegheny County, Pennsylvania, asking judicial intervention and injunctive relief against a discriminatory and unconstitutional order by the International Union Executive Board depriving appellant of the right of candidacy within the Union. Appellant exhausted appeal procedure under the Union Constitution except that he did not appeal to the International Convention which did not meet for several months beyond the four-month limitation for appeal provisions of Section 101(a)(4) of the Landrum-Griffin Act, Title 1, Act of September 14, 1959, 29 U. S. C., Par. 411(a)(4). The judgment of the Pennsylvania Supreme Court was entered March 17, 1964, and after petition for reconsideration, Notice of Appeal was filed in that Court on May 27, 1964. The jurisdiction of the Supreme Court to review this Decision by direct appeal is conferred by Title 28, United States Code, Sections 1257(1); and 2101(c). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case. Hammerstein v. Superior Court of California, in and for Los Angeles County, 340 U. S. 622; Kedroff v. St. Nicholas Cath. of Russ. Orth. Church in North America, 344 U. S. 94; Chaplinsky v. State of New Hampshire, 315 U. S 568; Virginia Railway

Co. v. U. S., 273 U. S. 658; Cedar Rapids Gas Light Co. v. Cedar Rapids Iowa, 223 U. S. 655; Oyama v. State of California, 332 U. S. 633; Demorest v. City Bank Farmers Trust, 321 U. S. 36; Berman v. Parker, 75 S. Ct. 98; Ker v. State of Cal., 374 U. S. 23; R. B. Parden *et al.* Petrs. v. Terminal Rwy. of the Alabama State Docks Dept. etc., 84 S. Ct. 1207; Cal. v. Taylor, 353 U. S. 553.

Question Presented

Does Section 101(A)(4) of the Labor-Management Reporting and Disclosure Act of 1959, Sept. 14, 29 U. S. C. A. par. 411(a)(4) control or modify the exhaustion of remedy rule theretofore enforced by state equity courts in suits by members against unincorporated unions?

Negatived below.

Statutes Involved

The pertinent sections of the Act of September 14, 1959, 29 U. S. C. A. par. 411(a)(4) and of the Act of June 23, 1947, 29 U. S. C. A. par. 158(b)(1) are set forth in Appendix A.

Statement

Appellant was elected president of Local 1211 U. S. W., on June 14, 1960, by 4,571 secret ballot votes out of about 6,000 ballots cast. The total membership eligible to vote in 1961 was in excess of 11,000 persons.

On July 20, 1961, a local union meeting, attended by less than three hundred members, voted to oust appellant as president by oral vote of 149 to 139; further, he was fined $2,000.00 and suspended from membership at the same meeting in like manner.

Appellant has been the target of attack by the president of his international union, and was four times brought to "trial" on charges instigated or directed by international officers. Three previous trials ended in complete vindication of the appellant.

In the fall of 1960, appellant declared himself to be a candidate for the office of Director of District 20 of the international union. Forthwith, an active campaign of antagonism and vilification was launched against him by officers and representatives of the international union, its District office and by their adherents in Local 1211. After finding that he could not expect to be accorded his constitutional and lawful rights to be nominated and to stand for election for the said office due to the concerted program of the international union to control the nomination procedures in the District, appellant filed an action in the United States District Court for the Western District of Pennsylvania at Civil Action No. 61-1 to protect his rights. Said action was filed January 3, 1961. On October 11, 1961, plaintiff won a decision in said action before Honorable Joseph P. Willson.

Pending hearing upon appellant's said former action, to-wit, on February 16, 1961; the fourth and largest set of "charges" were put against him in his local union. These so-called "charges" were five in number (set out in full in 9th paragraph of complaint herein), were merely vague generalities, scandalous and scurrilous in nature, and allegedly constituting violations of Article XII of the international union by-laws, specifying Sections 1(a), 1(c) and 1(i), and Article X, Sections 1(a), 1(c), 1(i) and 1(l).

The union constitutional Articles referred to require specific and detailed factual assertions in framing of charges; further, only specified categories of charges

justify fine, suspension or removal from office. The "charges" lodged against appellant failed to meet these basic requirements.

Article X, Section 2 of the constitution limits the bringing of any charge after sixty days from the time the complainant learned of the grounds for same. As the record later revealed this limitation had long since expired, had any basis for the "charges" even existed.

A local "trial committee" could not be selected at the regular meeting at which the "charges" were presented, because no one wanted to serve, and those attending sensed that the charges were insincere and vindictively and politically inspired.

At the following meeting of the local, a group antagonistic to appellant, urged on by non-members of the local, staff representatives of the District Office and international officers, set up a violently prejudiced "hanging" trial committee which set about to oust appellant by farcical employment of union procedures.

Article X, Sections 3 and 4 require appellant be given registered mail notice of the charges within seven days of the submission of same, and that a hearing be set "no sooner than two (2) weeks and no later than four (4) weeks from the date of the mailing of the notice and the charges". The "hearing" date was actually set for May 13, 1961 (over 12 weeks after filing).

The "Trial Committee", as required by the constitution and by-laws, adopted rules of procedure for the "trial" as had been previously controlling; Rule 5 permitted each side to "—have in attendance legal counsel providing only one such counsel may speak in its behalf. Costs to be borne by individual." Since at appellant's previous trial

in 1958 he was permitted under an exactly similar rule to be represented by a lawyer, he naturally assumed that he could secure the services of the same lawyer to prepare and present his defense at the "trial".

On May 13, 1961, at the very outset of the trial proceedings counsel for appellant was openly insulted, vulgarly and slanderously objected to by the complainant, and denied the right to either represent the appellant or to remain in the room to advise him, by a majority ruling of the "Trial Committee". Under the circumstances, principally because appellant had not been prepared to represent himself, he moved for a continuance which was promptly denied, and appellant necessarily withdrew from the "trial", which supposedly proceeded in his absence. The complainant was, however, permitted to be represented by a former lawyer, Lawrence Stern, who chose to resign from the Bar in Beaver County rather than abide the decision of a grievance committee; he is now a member of Local 1211.

The "Trial Committee" permitted to be spread into the record many irrelevant, incompetent, hearsay and remote matters not in any way bearing upon the "charges".

Appellant filed a timely request to answer the testimony so received, but was denied opportunity so to do.

Absolutely no legal or competent testimony or evidence put to the "Trial Committee" justified a finding of guilt or any penalty, fine, suspension or removal order or recommendation against appellant; however, on "orders from —I. W. Abel—" a report and recommendation of the "Trial Committee" was made to the said local union meeting of July 20, 1961, aforesaid, and, by the oral vote of 149 to 139, the fine, ouster and removal from office voted.

Immediately following said surprising and unlawful action of a fractional part of the membership, 703 qualified members presented to the officers of Local 1211 a petition for a special meeting to reconsider the said unwarranted and illegal action; however, despite the requirements of the constitution to heed such petition, on orders of the international union, no such meeting was called.

Appellant appealed to the international union executive board, which reversed only plaintiff's ouster from membership, sustained his ouster from office and a reduced financial penalty, but added the prohibition against appellant's right of candidacy for a period of five years. Because even that decision was delayed beyond the four months' limitation imposed by federal law upon union appellate procedure, a Civil Action at No. 61-531 was filed in the same District Court.

By its decision restoring appellant to membership, the latter action left only the question of appellant's right to office in issue—a question federal courts have decided they have no jurisdiction to determine, *sans* diversity, or other basis for jurisdiction.

The case was entered only after the District Court held it was without jurisdiction, following *Tomko v. Hilbert*, 288 F(2) 625.

Because a new election for local president was imminent in June, 1962, a preliminary injunction was sought and obtained postponing said election (Decree of June 18, 1962, herein). A supersedeas negatived the injunction, permitted the election and rendered same and appellant's right of candidacy therein moot (See Supreme Court decision herein at 251 March Term, 1962).

An amended complaint joining the local union and its officers as of the illegal trial in Local 1211 was filed after

the Supreme Court decision, as was an answer, new matter and reply.

On a motion for judgment on the pleadings by defendants below, the case was dismissed on the sole ground that appellant had failed to exhaust his union "remedies", and that the four month limitation of the Bill of Rights section of Landrum-Griffin did not affect the judicial requirement of exhaustion of remedy.

All of the facts above set out were elicited in the preliminary injunction proceeding below.

The state judicial exhaustion of remedy rule is superseded and modified by the Bill of Rights section of the Landrum-Griffin Act.

The appellant is here asking that the prohibition, arbitrarily and unlawfully imposed upon him by the international union, discriminatorily depriving him of his right of candidacy *generally*, presently and in future, be lifted. *He is not seeking review of the election of June, 1962, nor any other election.*

Mamula is only asking review and correction of a disciplinary order entered consequent to an illegal review of an illegal determination pursuant to illegal hearing of illegal charges in his local union.

The international union not only denied him proper appeal and redress under the union constitution—it has not only not reversed the unlawful decision appealed from, it has *changed and added to the penalty!* There is no provision for such arbitrary assertion of power over a member in the constitution of the union.

Mamula has been restored to membership, but shorn of his precious right of candidacy by the presumptuous act

of the autocratic international officers of the defendant international union.

Mere reference to the amended complaint, the answer thereto, the new matter replication demonstrates clearly that the sole issues here involved are: (1) the illegality and unconstitutionality of the charges preferred against appellant in his local union on February 16, 1961; (2) the untimeliness of said "charges"; (3) the illegality of the local Trial Committee; (4) the conspiracy of appellee to destroy Mamula as an opponent; (5) the illegality and insufficiency of the notice of charges; (6) the untimeliness of the "hearing" upon the "charges"; (7) the illegal and discriminatory denial of appellant's right to counsel in violation of Trial Committee's published Rule 5; (8) the illegality of the hearing, held *ex parte* after arbitrary refusal to continue same on appellant's motion after excluding his personal counsel who prepared the case; (9) the denial of equal opportunity by appellant to be heard in his defense; (10) the illegal and arbitrary findings of the dominated, prejudiced Trial Committee; (11) the illegal and improper notice of decision of the Trial Committee; (12) the illegal and improper submission of the Trial Committee's recommended "findings" for vote of the membership; (13) the illegal, prejudiced appellate tribunal appointment; (14) the arbitrary, discriminatory and illegal refusal of the appellee international union to set aside the illegal membership ouster *and* penalty unlawfully imposed by the local union Trial Committee (the ouster was reversed); (15) the additional, arbitrary, discriminatory and vindictive prohibition entered by the defendant international union against the appellant's right of candidacy; (16) damages.

These rights have not been disputed by the federal law. On the contrary, the Third Circuit Court of Appeals, in *Tomko v. Hilbert*, 228 F(2) 625, in a footnote to the opinion therein, states: "The state courts remain open to appellant. Rights and remedies that he may have under state law have not been pre-empted or affected by passage of the bill of rights section of the L. M. R. D. A."

Actually, the N. L. R. A. specifically contains a proviso negating any intention to govern union rules in respect to the acquisition or retention of membership; Sec. 8(b)(1)(A) proviso, 61 Stat. 141 (1947), 29 U. S. C. Sec. 158(b)(1).

Re: Exhaustion of Remedies

The amended complaint clearly sets out that proper appeal was lodged by the appellant from the illegal action of the local and its Trial Committee to the international union. It also asserts that no review was granted by the latter body within four months from the appeal; that a District Court suit was brought; and that prior to hearing, the international union reversed the local union's membership ouster decision, but sustained the appellant's ouster from office and a reduced financial penalty. However, the international union added a new penalty, a limitation on appellant's constitutional right of candidacy.

While the District Court's jurisdiction upon filing of the complaint was unassailable (because of plaintiff's ouster from membership), it was voided when membership was restored, leaving non-federal questions to be decided.

The specific additional question as to the applicability to state courts of the four month limitation fixed by the Landrum-Griffin Bill of Rights section was raised by the Court sitting upon appellees' motion for judgment on the pleadings.

Concededly, if the union appellate procedure must afford relief within the four month rule, no further question concerning the exhaustion rule should at this time concern the Court.

The specific section of the Bill of Rights, Title I of Landrum-Griffin, the Act of September 14, 1959, 29 U. S. C. par. 411(a)(4), dealing with the four month appeal time is as follows:

> "Protection of the right to sue.—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: Provided, *That any such member may be required to exhaust reasonable hearing procedures* (but not to exceed a four-month lapse of time) *within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof:* And provided further, That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition."

Primarily, it is to be noted that the general prohibition against a union's constitutional limitation of a member's right to sue refers to "an action in *any* court" (emphasis ours).

The Congressional enactment clothes the conduct of unions with a national public interest; it has been declared that the purpose of Title I of Landrum-Griffin is to "assure that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical

conduct in administering the affairs of their organizations; *Brooks v. Local 30, United Slate, Tile and Composition Roofers, etc.*, D. C. Pa. 1960, 187 F. S. 365. The Act is an exercise by the Congress of its constitutional authority in the field of interstate commerce; *Serio v. Liss*, 189 F. S. 358, 300 F(2) 386.

In *Detroy v. American Guild of Variety Artists*, 286 F.(2) 75, cert. den. 366 U. S. 929 (1961), the Courts held that a state rule on exhaustion of remedies must give way to the new national rule.

Probably the most influential voice in the drafting and interpretation of the Act is *U. S. Solicitor General Archibald Cox*. In his analytical commentaries, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 819, 840 (1960), this authority states that the limitation as well as the exhaustion of remedy provision of the Act controls in state as well as federal Courts, 76 *Harv. L. R.* 983, 1074.

The Wisconsin Supreme Court, in *Kopke v. Ranney*, 16 Wisc. (2) 369, 114 N. W. (2) 485 has recently held that the pertinent provisions of the Act control state actions, saying that the four month limitation provision "set a standard of promptness in the operation of an internal remedy."

The Wisconsin Court was guided to some extent also by *Falsetti v. Local Union No. 2026, U. M. W.*, 1180 Oct. T. 1956, Common Pleas Court of Allegheny County, Pennsylvania, sustained in 400 Pa. 145 (1960), wherein the Landrum-Griffin Act provisions as to exhaustion of remedies within four months are cited as applicable. The Supreme Court at 161 A(2) 882, 889 says:

"In this regard, for all situations which arise subsequent to the passage of the new 'Labor Bill of Rights' contained in the Labor-Management Reporting and Disclosure Act of 1959, Sec. 101(a)(4), and to which the Act is applicable, a member of a labor organization may be required to exhaust remedies *only* if such hearing procedures are 'reasonable' and if they are completed within four months."

Exhaustion would not be required on the facts herein.

Even were the four month limitation rule not here applicable, exhaustion of remedies could not apply under the standards set up by our equity Courts.

The complaint asserts that the entire injustice to which the appellant was subjected was the result of a design or conspiracy of the International officers to destroy him as a political opponent. The evidence of record establishes that the appellant was the national manager of the Dues Protest Committee, opponent of the incumbent officers of the International, and as such was singled out for malicious slander and libel in a campaign of vilification, abuse and threats, followed by a series of false charges, and, finally, to the charges, hearing, decision and penalty appealed from. Since the sole persons responsible for the bringing of the charges are the International officers, appeal to them would obviously have been so futile as to have justified a Court in saying that even such appeal was unnecessary; however, appellant did appeal to the International.

The Pennsylvania Supreme Court in *In Re: Schlessinger*, 404 Pa. 584, said that where a hearing committee acts as "prosecutor, judge and jury at the hearing on the committee's own complaint * * *" such proceedings deny due process and fairness so as to render it a "fundamentally fatal procedural defect". To this was added the com-

ment of Mr. Justice Benjamin R. Jones in his concurring opinion which follows:

> "It is repugnant to my sense of justice to permit a tribunal which by a majority vote of its members has levied a charge to sit in judgment upon such charge. In *In re:* Murchison, 349 U. S. 133, 75 S. Ct. 623, 625, 99 L. Ed. 942, the United States Supreme Court said:
>
> > 'A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases in which he has an interest in the outcome.'"

Under these circumstances, certainly such an appeal would have been adding to the burden of appellant beyond that required of him in equity or law; *Highway Truck Drivers and Helpers, Local 107, etc. v. Raymond Cohen*, 405 Pa. 55.

In *Falsetti, supra*, the Pennsylvania Supreme Court takes note of the exceptions to the necessity of exhaustion and especially states that:

> "Secondly, there is no need for a member to exhaust his internal remedies, where the association officials have, by their own actions, precluded the member from having a fair, effective trial or appeal."

It has long been held that mere prejudice of a tribunal that passes upon a member's rights, may in itself be sufficient to justify the interposition of equity; *Wilcox v. Supreme Council*, 210 N. Y. 370; *Correia v. Supreme Lodge*, 105 N. E. 977 (Mass.); *People v. McDonough*, 40 N. Y. S. 1147; *Williams v. District Executive Board*, 22 Lack. 185.

Another exception to the exhaustion rule here applicable was set out in *Highway Truck Drivers and Helpers, Local 170 v. Cohen*, 172 A(2) 824, 405 Pa. 55, as follows:

"This Court in Falsetti declared: 'Still another exception to the rule is where to insist that a member exhaust the appellate procedure would be unreasonably burdensome.'"

The appeal to a convention held only biennially, and dominated by the officers responsible for the false charges initially, would certainly be unduly burdensome to the appellant.

WHEREFORE, it is respectfully submitted that the order of dismissal should be reversed and the cause reinstated.

The Question is Substantial

The question in this appeal is novel and directly affects the declared federal policy of protecting democracy in unions. The Pennsylvania Supreme Court by its majority opinion has erroneously construed the pertinent section of the Landrum-Griffin Act contrary to its wording and intent.

The effect of the decision of the Pennsylvania Supreme Court is to invalidate Paragraph 411(a)(4) insofar as all rights to candidacy in trade unions are concerned, because it has already been ruled that such right of candidacy can only be protected in a state Court and not a United States District Court. If the sometimes interminable state exhaustion of remedy rules are thus kept in effect under state judicial decisions, the declared congressional policy of enhancing and broadening democratic process within trade unions is completely nullified.

The judgment of the Pennsylvania Supreme Court is contrary to and in direct conflict with the United States Court of Appeals in *Sheridan vs. United Brotherhood of Carpenters, etc.*, 306 F2d 152; *Parks vs. International*

Brotherhood of Electrical Workers, 314 F2d 886, 925; *Detroy vs. American Guild of Variety Artists*, 286 F2d 75, cert. den. 366 U. S. 929; and *Harris vs. International Longshoremen's Association, Local 1291*, 321 F2d 801, 805.

WHEREFORE, it is respectfully submitted that the question presented by this appeal is substantial and of great public importance.

Respectfully submitted,

HARRY ALAN SHERMAN,
Counsel for Appellant.

APPENDICES

APPENDIX A

The pertinent section of the Act of Congress of June 23, 1947, c. 120, Title I, par. 101, 61 Stat. 140, 29 USCA par. 158, (b) and (b)(1) are as follows:

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein;

The pertinent section of Act of Congress of September 14, 1959, 29 USCA par. 411(a)(4) is as follows:

(4) Protection of the right to sue.—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided*, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further*, That no interested employer or employer association shall directly or indirectly finance,

encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

APPENDIX B

Opinion of the Court

[53]

IN THE

SUPREME COURT OF PENNSYLVANIA

WESTERN DISTRICT

No. 31 March Term, 1964

NICHOLAS MAMULA,

Appellant;

v.

UNITED STEELWORKERS OF AMERICA, an unincorporated labor union, LOCAL 1211, UNITED STEELWORKERS OF AMERICA, LOUIS E. BIEGA, LOUIS DESENA, MICHAEL ZAHORSKY and DOMINIC IACABUCCI, its officers,

Appellees.

Appeal from the Judgment of the Court of Common Pleas of Allegheny County.

COHEN, J. Filed: March 17, 1964.

This is an appeal from the judgment entered below dismissing appellant's amended complaint for failure to exhaust internal union remedies. Appellees are the United

Steelworkers of America (International Union), Local 1211 of the United Steelworkers of America (Local Union), and various officers of Local Union.

It appears from the amended complaint that appellant formerly held the office of president in Local Union. In 1961, charges of misconduct were brought against him and after a hearing by a trial committee of Local Union, these charges were sustained and it was recommended that appellant be removed from office, fined $2,000, and be suspended from union membership until the fine was paid. When these recommendations were approved by the membership of Local Union, appellant appealed to the Executive Board of the International Union in accordance with the procedure prescribed in the International Constitution.

The Executive Board on January 20, 1962, reversed appellant's suspension from union membership and remitted the $2,000 fine, but affirmed appellant's removal from office. In addition, the Board stated that appellant should not be eligible to hold office for five years nor until he repaid $1,081.99, the amount of expense allegedly caused by his misconduct. Once this amount was tendered, however, the Board left open the possibility of decreasing the period of disqualification from office. Although the International Constitution permitted a final appeal to the International Convention of the Union which was scheduled to convene in September, 1962, appellant did not invoke this internal procedure but instead instituted the present suit complaining solely of his ineligibility to hold union office.[1]

[1] In prior litigation, appellant unsuccessfully attempted to challenge his removal from office and the election subsequently held in June, 1962, to fill this vacancy. See *Mamula v. United Steelworkers of America*, 409 Pa. 175, A. 2d (1962) and *Mamula v. United Steelworkers of America*, 304 F. 2d 108 (3d Cir.), *cert. denied*, 371 U. S. 823 (1962). Although his amended complaint is not clear on the point, appellant states in his brief that the present action is concerned solely with his ineligibility to hold union office.

Appendix B.

We hold that the court below correctly dismissed this action for failure of appellant to exhaust his internal union remedies.

In *Falsetti v. Local Union No. 2026, United Mine Workers of America*, 400 Pa. 145, 161 A. 2d 882 (1960), we examined at length the basis and rationale for the general rule that a member of an unincorporated association must first exhaust his available internal remedies before seeking judicial relief. We concluded that such a rule not only benefits the association by promoting autonomy and internal democracy, it also aids the judicial process by settling grievances internally and, where not settled internally, by supplying our courts with the considered judgment of the association tribunals. At the same time, we sought in *Falsetti* to protect the rights of the grievant member by establishing certain limited exceptions to the exhaustion rule where, for example, the available remedies are illusory or resort to them would be futile or unreasonably burdensome. The experience since *Falsetti* has not indicated any necessity for reexamining the general principles therein set forth.

In attempting to justify his failure to appeal to the International Convention, appellant makes two contentions: (1) the general exhaustion rule is inapplicable because appeal to the Convention would have been futile and unreasonably burdensome; and (2) even if the rule is applicable, it has been modified by Section 101(a)(4) of the Landrum-Griffin Act.

With regard to the first contention, appellant's complaint alleges that the disciplinary action of Local Union

was directed by the international officers who are biased against him and thus further appeal would have been "illusory, futile and vain and would only afford said international union defendant opportunity for further delaying plaintiff's rights and remedies." We held in *Falsetti* that the grievant member must set forth facts in his complaint to support the allegation that there exists an exception to the exhaustion rule. See also *Wax v. International Mailers Union*, 400 Pa. 173, 161 A. 2d 603 (1960). Not only has appellant failed to do this, but the admitted facts belie his contention that the bias of the international officers made an appeal to the International Convention futile.

In the first place, we have seen that appellant's appeal to the Executive Board of the International Union resulted in a reversal of his suspension from union membership and a remittance of the $2,000 fine. This fact casts considerable doubt on appellant's assertion that the internal appellate tribunals were pre-judged against him. Secondly, it appears that the international officers constituted a very small percentage of the membership at the International Convention.[2] Hence even if the international officers were biased against appellant, it does not necessarily follow that the Convention would have denied him a fair hearing. See *Kopke v. Ramsey*, 16 Wis. 2d 368, 115 N. W. 2d 485, 488 (1962).

Appellant argues that the exhaustion rule is also inapplicable because it would have been unreasonably burdensome for him to appeal to the International Convention in view of the eight-month delay between the decision of

[2] Of the nearly 3000 delegates at the International Convention, only 33 were international officers.

the Executive Board (January, 1962) and the meeting of the Convention (September, 1962). As we indicated in *Falsetti*, a grievant member need not as a general matter appeal to an International Convention which does not convene for several years. However, a two or three-step appellate procedure is not *per se* unduly burdensome, nor is it possible to set forth for all situations a time limit beyond which exhaustion of internal remedies will not be demanded. Rather, an examination must be made of the special factors in each case, especially the possible prejudice caused to the grievant member from the delay in internal appellate procedures.

Applying this test to the instant case, we find that here the eight-month time period was not unreasonably burdensome. It must be remembered that the Executive Board reinstated appellant to union membership and hence there was no loss of possible employment opportunities during this period. With regard to appellant's ineligibility to hold union office, it appears that another election did not take place until some time in 1963,[3] well after the meeting of the International Convention. Thus no apparent harm would have resulted to appellant from insistence on an appeal to the International Convention.[4] Particularly is this so since the right appellant seeks to protect is his right to be a candidate for office—a right *not* protected by the "Bill of Rights of Members of Labor Organizations", 29 U. S. C. A. § 411-415. We conclude, therefore, that none of the exceptions set forth in *Falsetti* are here applicable.

---

[3] Appellant unsuccessfully attempted to challenge the election held in June, 1962. See *supra* note 1.

[4] It is interesting to observe in this connection that appellant's amended complaint was not filed until January, 1963, again after the date of the International Convention.

Appendix B.

Our determination here does not mean we fail to recognize that in many instances an appeal to the International Convention is so illusory that it would be futile and unreasonably burdensome to require resort to Convention action prior to instituting suit. In fact, the whole appellate procedures of some unions are subject to the indictment of being illusory. Indeed, some new internal facility is required in some union discipline procedure—such as a public review board—which would have final jurisdiction to hear appeals from the decisions of the union. Such a board would be extremely helpful to unions, its members and the courts, and dissipate the overtones or bias that permeates some union disciplinary action. See 73 Yale L. J. 472 (1964). Full protection of a member's individual rights of any nature is important to the concept of union democracy. Union officials should not be permitted to discipline so as to silence criticism, punish complainers and discourage reform. See *Salzhandler v. Caputo*, 316 F. 2d 445 (1963).

Appellant next contends that our exhaustion rule has been modified by Section 101(a)(4) of the Landrum-Griffin Act. That section provides as follows:

> "Protection of the right to s —No labor organization shall limit the right of any member thereof to institute an action in any court, or in any proceeding before any administrative agency, * * * or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse*

of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof. * * *"*[5] (Emphasis supplied.)

Appellant argues that the proviso clause means that courts, both state and federal, may not compel a grievant member to invoke an internal remedy which will consume more than four months. Since the appeal to the International Convention involved an eight-month delay, appellant asserts that he was not required to exhaust this remedy. We do not agree.

We read Section 101(a)(4) as a limitation upon labor organizations and not upon the judiciary. Prior to the passage of the Landrum-Griffin Act, many unions had provisions in their constitutions stating that any member who brought suit against the union without first exhausting all available internal remedies—no matter how burdensome or time-consuming—was subject to expulsion from membership.[6] Congress' purpose in enacting Section 101(a)(4) was to invalidate such provisions,[7] thereby protecting the union member from discipline for violation thereof, where insistence on exhaustion of remedies would be either (1) unreasonable or (2) exceed a four-month time period. Congress did not intend to alter state rules relating to exhaustion of remedies which, as we have seen, are designed to aid the courts as well as the unincorporated association. Thus while appellant could not be disciplined for bringing

[6] *See* Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 819, 839 (1960).

[7] Section 101(b) of the Act states that "[a]ny provision of the constitution and by-laws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect." 29 USCA § 411(b).

suit before appealing to the International Convention, the failure to exhaust this internal remedy still precludes resort to our courts.

An examination of the language of Section 101(a)(4) plainly supports this interpretation. In the first place, the section states that "[n]o labor organization" shall limit the right of any member to institute suit or to take other remedial steps. There is no reference to existing judicial limitations on the ability of members of unincorporated associations to maintain action against the association. In this connection it should be remembered that the Landrum-Griffin Act was designed to promote union democracy by protecting the rights of a union member *vis-a-vis* his union. In fact, Title I, of which Section 101(a)(4) is a part, is labeled the "Bill of Rights of Members of Labor Organizations" and sets forth various restrictions upon labor organizations.

Secondly, the language relied upon by appellant appears in a parenthetical clause contained in a proviso to the restrictions imposed upon labor organizations. It is highly unlikely that Congress would attempt in such a cavalier manner to alter established state court rules relating to exhaustion of internal remedies.[8]

Appellant cites two federal cases and some language contained in *Falsetti* in support of his interpretation of Section 101(a)(4). The federal cases[9] involved suits brought in federal court under Section 102 of the Landrum-Griffin

[8] See Cox, *supra* note 6 at 839-41; Hickey, *The Bill of Rights of Union Members*, 48 Geo. L. J. 226, 254 (1959); Smith, *The Labor-Management Reporting and Disclosure Act of 1959*, 46 Va. L. Rev. 195 (1960).

[9] Appellant cites *Harris v. International Longshoremen's Association, Local No. 1291*, 321 F. 2d 801 (3d Cir. 1963) and *Detroy v. American Guild of Variety Artists*, 286 F. 2d 75 (2d Cir. 1961).

Act[10] to remedy alleged violations of Title I of the Act. We read those decisions as merely adopting for the federal courts an exhaustion of remedies rule patterned upon the proviso clause in Section 101(a)(4). Those cases do not mean that state courts must also adopt this exhaustion rule.

Appellant also misconstrues our language in *Falsetti*. In the course of discussing generally the exhaustion of remedies doctrine, we mentioned in that case the recent enactment of Section 101(a)(4) of the Landrum-Griffin Act.[11] Since the impact of the Act upon our own exhaustion rule was not involved in the decision in *Falsetti*, we certainly did not intend to decide this important question at that time. Indeed, our brief discussion of Section 101(a)(4) is expressly confined to situations "to which the Act is applicable." In our decision today, we hold that Section 101(a)(4) does not alter the Pennsylvania exhaustion of remedies rule.

Since appellant has not shown any legal justification for his failure to exhaust internal union remedies, we conclude that the judgment entered below must be affirmed.

Judgment affirmed.

Mr. Justice Roberts files a dissenting opinion in which Mr. Chief Justice Bell joins.

Mr. Justice Jones dissents.

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[10] Section 102 provides that suits for violations of Title I may be brought in a federal district court. 29 USCA § 412.

[11] The language in *Falsetti* relied upon by appellant appears at 400 Pa. 145, 160.

APPENDIX C

Dissenting Opinion

[53]

IN THE
SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT
No. 31 March Term, 1964.

NICHOLAS MAMULA,

Appellant,

v.

UNITED STEELWORKERS OF AMERICA, an unincorporated labor union, LOCAL 1211, UNITED STEELWORKERS OF AMERICA, LOUIS E. BIEGA, LOUIS DESENA, MICHAEL ZAHORSKY and DOMINIC IACABUCCI, its officers.

Appeal from the Judgment of the Court of Common Pleas of Allegheny County.

Filed: March 17, 1964.

ROBERTS, J.

Even a highly imaginative fiction writer would have considerable difficulty conceiving a procedure more futile, frustrating and meaningless than having an individual member appear before an International Convention, consisting of approximately 3,000 delegates, to present and argue his grievances against the leadership of the union, with the expectation of moving that body to hear, understand and

decide the controversy on the merits. Such exposure to the convention arena is not a reasonable pursuit of a remedy; rather, it is a compelled involvement in a vast and undefined contest. The convention is not a tribunal conducive to the fair and impartial determination of a controversy. The customary protections, rights and rules usually associated with the hearing and decisional process are totally absent. I see no reason why the litigant here should be required to travel such a hazardous and unproductive road. In no other instance is one seeking justice required to engage in such futility.

Surely, ordinary experience indicates that were a member to seek to avail himself of this doubtful opportunity to appear before such a massive forum to plead his cause, he would be engaging in a rather empty, burdensome and worthless exercise. To regard such a venture as anything but illusory is to ignore reality. No decision of this Court or any other authority requires such a result. This record does not sustain the majority's conclusion that appellant failed to exhaust his internal union remedies.

I am also unable to share the majority's interpretation of Section 101(a)(4) of the Landrum-Griffin Act and the majority's failure to apply it to this litigation. This section obviously does not alter the established substantive rule of this Commonwealth which requires exhaustion of internal union remedies. It does, however, make it unmistakably clear that "no labor organization" may delay the availability of such internal remedies for more than four months.

If appeal to the International Convention be regarded as a "remedy", as the majority holds, then clearly its avail-

ability fails to comply with the statute, since that hearing procedure was postponed more than four months.*

I conclude, therefore, that appellant may not be denied relief in our courts. He has effectively exhausted all meaningful internal union remedies. Moreover, even if appeal to the International Convention be considered more than an empty gesture, as the majority holds, the Landrum-Griffin Act requires that such appeal be available within four months of the conclusion of the prior step in the appeal process.

I dissent.

Mr. Chief Justice Bell joins in this Opinion.

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* The Executive Board acted on January 20, 1962, and the International Convention was not scheduled to convene until the following December.

APPENDIX D

Petition for Reargument

IN THE
SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

No. 31 March Term, 1964.

NICHOLAS MAMULA,

Appellant,

vs.

UNITED STEELWORKERS OF AMERICA, an unincorporated labor union, LOCAL 1211, UNITED STEELWORKERS OF AMERICA, LOUIS E. BIEGA, LOUIS DESENA, MICHAEL ZAHORSKY and DOMINIC IACABUCCI, it officers,

Appellees.

To the Honorable, the Chief Justice and the Associated Justices of said Court:

The petition of Nicholas Mamula, appellant, for reargument of the within matter, respectfully represents:

1. On March 17, 1964, a majority of the members of this Honorable Court affirmed the judgment of the Court of Common Pleas of Allegheny County, Pennsylvania; the learned Chief Justice, together with two Associate Justices, dissented.

2. The majority opinion, as authored by Mr. Justice Cohen, misconstrues the language and meaning of the Act

of Congress known as the Landrum-Griffin Act, erroneously holds that its application is limited by a state jurisdictional rule which conflicts with the public policy purpose of the federal law, and includes fact-findings therein which were not of record, which are contrary to the assertions of the dismissed complaint, and which in effect adjudicate the merits of the cause while purportedly affirming the simple, procedural dismissal of the complaint below, thereby denying plaintiff due process of law.

3. The majority opinion erroneously and improperly rejects applicable decisions of the United States Circuit Courts of Appeal which have specifically ruled upon Section 101(a)(4) of the Landrum-Griffin Act, as follows:

(a) Whereas the majority opinion herein says: "We read Section 101(a)(4) as a limitation upon labor organizations and not upon the judiciary", *Sheridan v. United Brotherhood of Carpenters, etc.*, 306 F2d 152 points out that the wording of this section "does not say who may impose that requirement" (to exhaust internal union remedies before resorting to court action).

(b) Whereas the majority opinion holds that Section 101(a)(4) is not a limitation upon the judiciary, *Parks v. International Brotherhood of Electrical Workers*, 314 F2d 886, 925 (1963), has clearly stated: Not only does Section 101(a)(4) govern the exhaustion question in the Parks action, but since it provides an authoritative expression of congressional labor policy, it is, insofar as it may modify the common law exhaustion doctrine, a prime source upon which the court should draw in formulating the federal law in deciding the local's case. See *Textile Workers v. Lincoln Mills*, 353 U. S. 448, 456-457, 77 S. Ct. 912, 1 L. Ed. 2d 972 (1957)".

Appendix D.

(c) Whereas the majority opinion treats the Section as of mere "Parenthetical" significance, injected in the federal law in "a cavalier manner", *Detroy v. American Guild of Variety Artists*, 286 F2d 75, cert. den. 366 U. S. 929 had already declared: "Congress has provided a safeguard against abuse by a union of the freedom thus granted it by not requiring exhaustion of union remedies if the procedures will exceed four months in duration".

(d) Whereas the majority opinion holds that the state exhaustion rule is unaffected by the Section, it should recognize that "In construing the federal act, federal, and not state law, is controlling". *Detroy, supra.*

(e) Whereas the majority opinion holds that appellant was required to appeal to the convention even though it would not meet for several months beyond the four-month limitation of the Section, *Harris v. International Longshoremen's Assoc. Local 1291*, 321 F2d 801, 805, citing *Carroll v. Associated Musicians*, S. D. N. Y. Jan. 15, 1963, CCH Lab. Cas. 28438, 28445, had held that such appeal was not required, and said: "* * * it would not promote the stated purposes of Congress to insist that a union member pursue an internal remedy which could not, by its very nature, result in a decision within the period chosen by Congress as a reasonable norm."

4. The majority opinion arbitrarily and wrongfully concludes that the international union executive board voluntarily reinstated appellant into membership, whereas the complaint (which alone, without any testimony or fact findings is before the Court for review) in paragraphs 42nd, 43rd and 44th clearly sets out that such reinstatement was effected only by institution of federal court action

against appellee, and for the sole purpose of defeating jurisdiction of the federal court to review the unlawful onster of plaintiff.

5. The majority opinion wrongfully concludes as a matter of law that a delay of eight months is a reasonable time, whereas such determination requires proof, not in the record before the Court, and is a question for determination by the fact-finding, or trial court; *Holt v. Pariser*, 161 Pa. Super. 315.

6. The majority opinion wrongfully concludes that appellees have not pre-judged appellant and that there were "admitted facts" of record which "belie" the assertions of the complaint, whereas no factual or legal basis of record for such conclusion exists, and such conclusion is contrary to the fundamental requirement of law that all facts and inferences of fact must be resolved in appellant's favor, in reviewing a preliminary judgment dismissing his complaint.

7. While asserting that "an examination must be made of the special factors in each case, especially the possible prejudice caused to the grievant member from the delay in internal appellate procedures", the majority opinion forecloses such "examination" for appellant by a trial court, and wrongfully concludes that such examination can be or has been made herein by the majority of this Honorable Court, contrary to its constitutional power so to do.

8. The majority opinion wrongfully, and without record findings to support it, concludes that appellant would not be prejudiced by appeal to the International convention; when it might just as well have taken judicial notice of the

notorious physical beatings inflicted upon opponents of the international officers at the Atlantic City convention of appellee union. Further, the majority went off the record, as did the court below, in taking judicial notice of the number of officers and delegates at the International convention.

9. The majority opinion is in tone and tenor a strong defense of the appellee international union without fact-findings or proof supporting same, and in direct conflict with the assertions of the complaint, which remain unproved only because the appellant is denied his day in court.

WHEREFORE, it is respectfully moved that reargument hereof be had, and that the erroneous opinion of the majority be vacated.

Attached hereto are copies of the opinion and judgment appealed from, the majority and dissenting opinions of this Honorable Court of March 17, 1964, and a copy of appellant's brief heretofore submitted.

Respectfully so moved.

HARRY ALAN SHERMAN,
Attorney for Appellant.

APPENDIX E

THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

PATRICK N. BOLSINGER
Prothonotary

HELEN D. STEELE
Deputy Prothonotary

Pittsburgh
15219

May 26, 1964

Harry Alan Sherman, Esq.
986 Carlton House
Pittsburgh 19, Pa.

Re: Mamula v. United Steelworkers of America, et al. No. 31 March Term, 1964

Dear Mr. Sherman:

Please be advised that the Court has entered the following Order on the Petition for Reargument filed in the above matter:

"May 22, 1964

Petition denied.

PER CURIAM"

Very truly yours,

HELEN D. STEELE,
Deputy Prothonotary.

PNB:wb
cc: Wilner, Wilner and Kuhn, Esqs.
Ernest G. Nassar, Esq.

APPENDIX F

Opinion

ELLENBOGEN, P. J.

1211 of the United Steelworkers of America;

This case comes before us on plaintiff's amended complaint in equity and answer thereto, and on a motion *ex parte* defendants for judgment on the pleadings on the grounds that

(1) The plaintiff has failed to exhaust the remedies available to him within the United Steelworkers of America; and

(2) Plaintiff has failed to join indispensable parties.

Plaintiff's "amended" complaint contains fifty-five separate paragraphs. Paragraph fifty-three has thirteen subparagraphs. The averments in the amended complaint contain a long history of the background of this litigation. Many of the averments of the amended complaint are immaterial to the issue before us.

There is a confusion of allegations and prayers between the amended complaint and plaintiff's brief, so that it is difficult to determine what relief is really sought here. For instance, paragraph fifty-five requests:

(1) That the Court "enter an appropriate decree setting aside the decisions and orders of defendants against plaintiff," without specifying what decisions and orders are intended to be included in this general statement;

(2) That defendants and their officers and agents be enjoined from interfering with plaintiff's right to be a candidate for the office of President of Local Unit

(3) That plaintiff be accorded "full rights as a member and candidate in common with other members and candidates";

(4) That plaintiff be permitted to post his injunction bond to make effective a temporary decree. It is not clear which temporary decree is referred to;

(5) That plaintiff be accorded "full compensation and damages for the unlawful deprivation of offers and rights to office"; and

(6) A general prayer for relief.

In its brief, however, plaintiff specifically states that:

"The plaintiff is here asking that the prohibition, arbitrarily and unlawfully imposed upon him by the international union, discriminantly depriving him of his right of candidacy generally, presently and in futuro, be lifted. *He is not seeking review of the election of June, 1962, nor of any other election.*

"Manula is only asking review and correction of disciplinary order entered consequent to an illegal review of an illegal determination pursuant to illegal hearing of illegal charges in his local union."

The controlling pleading in this case is, of course, the amended bill of complaint rather than plaintiff's brief, but in either case plaintiff's action cannot be maintained.

A brief history of the material facts of this case is as follows:

Prior to July 20, 1961, plaintiff was the President of Local 1211, United Steelworkers of America. On February 16, 1961, charges were submitted to the Local by a local

union official, accusing plaintiff of misconduct as an officer and member of the union.

After a hearing, a trial committee, recommended that plaintiff be removed from office, fined $200 and suspended from membership in the union until the fine was paid. On July 20, 1961, the Local ratified these recommendations at a membership meeting.

Plaintiff filed an appeal with the International Executive Board on August 14, 1961, and the Local scheduled an election to fill the vacancy resulting from plaintiff's removal from office.

On January 20, 1962, the Board reversed the suspension of Mamula and remitted his fine, but affirmed his removal from office and barred him from holding union office for five years, *i.e.* until July 20, 1966, or until he repaid to the Local $1081.00, expenses allegedly caused by his misconduct, whichever was later. The disbarment from office could be shortened by the Board upon a showing by Mamula that he had repaid the amount and had "reformed."

The regular local election was scheduled to take place on June 19, 1962. Plaintiff obtained a preliminary injunction restraining its occurrence, but a supersedeas was granted by Mr. Justice O'Brien of our Supreme Court and the election was held..

Plaintiff did not file an appeal to the International Convention of the Union which was held in September, 1962. Instead, he filed the present action.

As far as the election of June 19, 1962, is concerned, our Supreme Court, in an opinion of Mr. Justice Cohen, decided in the case before us that the Courts of Pennsylvania

have no jurisdiction to determine the validity of an election already held. Mamula v. United Steelworkers of America, 409 P. 175.

This case was also before the United States District Court in and for the Western District of Pennsylvania, and before the Third Circuit Court of Appeals. In Mamula v. United Steelworkers of America, *et al.*, 304 F. 2d 108 (1962) the Third Circuit Court of Appeals held that plaintiff should pursue the remedies prescribed by Title IV of the Labor-Management Reporting and Disclosure Act of 1959 by complaining to the Secretary of Labor; and in Mamula v. Local 1211 United Steelworkers of America, *et al.*, 205 F. Supp. 915 (1962), Chief Judge Gourley held likewise that the plaintiff should appeal for relief to the Secretary of Labor and that the United States District Court did not have jurisdiction.

According to plaintiff's brief, though not under his amended bill of complaint, plaintiff is only seeking review of the action of International Union on January 10, 1962, barring plaintiff from holding office in the union for five years or until 1966, except that upon a showing that he had cleansed himself, such five-year period could be reduced, provided he would restore to the local treasury the sum of $1,087.00 which allegedly had been improperly wasted through plaintiff's alleged misconduct as an officer of the local).

According to the constitution and by-laws of the defendants, which is an exhibit attached to the original bill of complaint, the next election of local officials will not take place until two years after the last election, which took place on June 19, 1962.

Appendix F.

Defendant contends that the plaintiff's action is premature because plaintiff did not exhaust the internal remedies provided for by the constitution and by-laws of the United Steelworkers of America, defendant.

The basis of plaintiff's amended complaint is the decision of the International Executive Board of the union, rendered on January 10, 1962, which disqualified plaintiff from holding office in the union for a period of five years. The Constitution of the union provides in Article 13, Section 6 for an appeal of that decision within thirty days "to the next regular International Convention."

Plaintiff never filed such an appeal although the International Convention met in September of 1962. The reason given by plaintiff for not appealing the action of the International Executive Board is an allegation in Paragraph 51 of the amended appeal that "further appeal to the international office would be illusory, futile and vain and would only afford said international union defendant opportunity for delaying plaintiff's rights and remedies." It is difficult to understand this allegation because the International Convention consists of nearly 3000 delegates which are elected by the membership. It is obvious that the 33 International Union officers are a very small percentage of the delegates to the convention and could not control the action of the convention if it saw fit to reverse the action of the International Executive Officers.

We want to state emphatically that the doctrine that all internal remedies provided for the government of unincorporated associations such as unions must be exhausted, is salutary, necessary, and proper to achieve democracy in the management of such organizations, and to promote

autonomy of such organizations. This doctrine also protects and benefits the membership of the union and the general public.

We might add that it is also in the interest of the administration of justice in the courts that as many complaints of this nature as can be settled by the association's machinery should be so settled, rather than flood the courts. In the recent case of Falsetti v. Local Union 2026, U. M. W. A., 400 Pa. 140 (1960) which we decided in the Court below, this doctrine was thoroughly discussed and re-emphasized in strong language. To the same effect is the companion case of Wax v. International Mailers Union, 400 Pa. 173. Nothing is averred in the instant case which would bring plaintiff within any of the recognized exceptions to this rule.

Plaintiff contends that the exclusion rule as it prevails in actions of equity in the state court has been altered by section 101 (A) (4) of the Labor-Management Reporting and Disclosure Act often referred to as the Landrum-Griffin Act. A reading of that section shows that this contention is not well taken:

> "*No labor organization* shall limit the right of any member thereof to institute an action in any court * * * PROVIDED, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organization or any officer thereof": (Emphasis Supplied)

This section applies to the Union and not to the equitable doctrine of exhaustion of remedies evolved in the courts.

Appendix G.

There is a statement in the Falsetti Case whicl could be construed otherwise but that statement is a dictum. It did not concern the issues before the Court.

As already stated, if plaintiff would have diligently pursued that remedy his appeal could have been ruled on by the International Convention which was held in September of 1962.

It is clear from what we have already said that since plaintiff failed to avail himself of the remedies provided for by the constitution of the International Union, he cannot maintain this action.

APPENDIX G

Order

AND NOW, to-wit this 16th day of July A. D., 1963, after argument and upon consideration thereof, the motion *ex parte* defendants for judgment on the pleadings is hereby sustained, and plaintiff's amended bill of complaint is dismissed. Costs to be paid by United Steelworkers of America, Local 1211.

By the Court,

/s/ HENRY ELLENBOGEN,
President Judge.

Eo die. Exception noted to plaintiff, and bill sealed.

/s/ HENRY ELLENBOGEN, (SEAL)
President Judge.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 327

NICHOLAS MAMULA, *Appellant*,

v.

UNITED STEELWORKERS OF AMERICA, *et al.*

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

MOTION TO DISMISS

Pursuant to Rule 16 of the Rules of this Court, appellees respectfully move that the above-entitled appeal be dismissed, and that, treating the papers as an application for a writ of certiorari, the writ be denied.

STATEMENT

Appellant Nicholas Mamula was, until the events described herein, the President of Local Union 1211, United Steelworkers of America. During Mamula's tenure as President, a member of his local filed charges alleging that Mamula had committed a number of violations of the union's Constitution. These charges were heard by a Trial Committee elected by the local union, which found Mamula guilty of twelve specific acts of misconduct. The local union membership voted to remove him from office, to fine

him $2,000, and to suspend him from membership until the fine was paid (R. 63).

Mamula appealed the action of his local union to the International Executive Board of the United Steelworkers of America, which rendered its decision on January 20, 1962. The Board reversed six of the findings of misconduct, but affirmed six others. Those affirmed were as follows:

(1) Allowing and condoning a wildcat strike;

(2) Refusal to stop operating a bingo game, illegal under state law and contrary to the policy of the International Union, despite repeated warnings and orders from the International to cease;

(3) Illegal absence and expenditures;

(4) Unauthorized appointment of "watchers" at a local union election, at great expense to the union;

(5) Instructing Chairman of Athletic and Recreational Committee to continue maintenance of separate fund, despite International policy and orders that all funds of the local union be consolidated within the control of the financial officers.

(6) Interfering with duties of Staff Representative and entering into unauthorized secret agreement with management without consulting other persons whose consent was required.[1]

On the basis of its findings, the Board reversed the fine and suspension from membership, but determined that Mamula would be disqualified from holding further office in the union until July 20, 1966, and until he restored to the

[1] The present action is the second brought by appellant seeking to set aside the action of the union. The specific violations found by the International Executive Board do not appear in the record in the court below but are set forth in the record of the prior litigation between the same parties, *Mamula* v. *Local 1211, United Steelworkers of America*, 205 F. Supp. 915 (W.D.Pa. 1962).

union $1,081 wasted by his acts of misconduct (R. 63-64).[2]

The union's Constitution provides for appeals of the International Executive Board's decisions to the International Convention, which was scheduled to meet, and did meet, in September, 1962 (R. 93). Mamula, however, did not file an appeal to the Convention (R. 35).

Instead, Mamula turned to the courts. He first sued in federal district court in Pittsburgh, claiming that the union's action had violated the Labor-Management Reporting and Disclosure Act ("LMRDA") 29 U.S.C. §§401 et. seq. That complaint was dismissed for failure to state a claim upon which relief could be granted. *Mamula* v. *Local 1211, United Steelworkers of America,* 205 F. Supp. 915 (W.D. Pa. 1962).

Mamula did not appeal this dismissal. Instead, he instituted the present action in the Court of Common Pleas of Allegheny County, Pennsylvania. His amended complaint, which was filed in January, 1963, charged that the union had violated the common law of Pennsylvania in the conduct of his trial (R. 24-40). Defendants filed an answer denying the charges (R. 41-55), and a motion for judgment on the pleadings on the ground, *inter alia,* that, as the complaint admitted (R. 35), Mamula had not exhausted his remedies within the union (R. 60). The trial court granted this motion, and dismissed the complaint, holding that Mamula, by not appealing the International Executive Board's ruling to the International Convention, had failed

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[2] The record in the court below consisted solely of the complaint, the answer, and the motion for judgment on the pleadings. Appellant, however, includes in his jurisdictional statement a lengthy indictment of the union (pp. 3-7), none of which is supported by the record, and all of which is either false or misleading. We will not burden this Court with still additional information outside the record in refutation of these allegations. We have felt it necessary to interject this comment, however, lest this Court otherwise construe our silence as a tacit acknowledgment that there might be some truth to appellant's baseless charges.

to exhaust his internal union remedies, (R. 61-69, J.S. 36-42).

On appeal, the Supreme Court of Pennsylvania affirmed (R. 96-103, J.S. 18-26). The Court's opinion, per Justice Cohen, explained that there were no circumstances alleged in this case which, under Pennsylvania law, would justify Mamula's failure to exhaust his internal remedies before seeking relief in the courts.

> "Appellant argues that the exhaustion rule is . . . inapplicable because it would have been unreasonably burdensome for him to appeal to the International Convention in view of the eight-month delay between the decision of the Executive Board (January, 1962) and the meeting of the Convention (September, 1962) . . . [It is not] possible to set forth for all situations a time limit beyond which exhaustion of internal remedies will not be demanded. Rather, an examination must be made of the special factors in each case, especially the possible prejudice to the grievant members from the delay in internal appellate procedures.
>
> "Applying this test to the instant case, we find that here the eight-month time period was not unreasonably burdensome" (R. 99-100, J.S. 21-22).

Mamula had contended, *inter alia*, that Section 101(a)(4) of the LMRDA, 29 U.S.C. §411 (a)(4), forbids state courts, in actions under state law, from requiring the pursuit of internal remedies for more than four months. Section 101(a)(4) provides in pertinent part as follows:

> "No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency . . . Provided, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative pro-

ceedings against such organizations or any officer thereof. . . ."

The court rejected Mamula's contention, holding that Section 101(a)(4) does not disturb the power of state courts to withhold jurisdiction pending pursuit of internal remedies for whatever period they deem appropriate. It reasoned as follows:

> "We read Section 101(a)(4) as a limitation upon labor organizations and not upon the judiciary. Prior to the passage of the Landrum-Griffin Act, many unions had provisions in their constitutions stating that any member who brought suit against the union without first exhausting all available internal remedies—no matter how burdensome or time-consuming—was subject to expulsion from membership. Congress' purpose in enacting Section 101(a)(4) was to invalidate such provisions, thereby protecting the union member from discipline for violation thereof, where insistence on exhaustion of remedies would be either (1) unreasonable or (2) exceed a four-month time period. Congress did not intend to alter state rules relating to exhaustion of remedies which, as we have seen, are designed to aid the courts as well as the unincorporated association. Thus while appellant could not be disciplined for bringing suit before appealing to the International Convention, the failure to exhaust this internal remedy still precludes resort to our courts.
>
> "An examination of the language of Section 101(a)(4) plainly supports this interpretation. In the first place, the section states that '[n]o labor organization' shall limit the right of any member to institute suit or to take other remedial steps. There is no reference to existing judicial limitations on the ability of members of unincorporated associations to maintain action against the association. In this connection it should

be remembered that the Landrum-Griffin Act was designed to promote union democracy by protecting the rights of a union member vis-a-vis his union. In fact, Title I, of which Section 101(a)(4) is a part, is labeled the 'Bill of Rights of Members of Labor Organizations' and sets forth various restrictions upon labor organizations.

"Secondly, the language relied upon by appellant appears in a parenthetical clause contained in a proviso to the restrictions imposed upon labor organizations. It is highly unlikely that Congress would attempt in such a cavalier manner to alter established state court rules relating to exhaustion of internal remedies" (R. 101-02, J.S. 24-25).

Justice Roberts dissented, in an opinion joined by Chief Justice Bell (R. 104-05, J.S. 27-29). He argued that, as a matter of state law, members should not be required to appeal to conventions, since conventions are not tribunals conducive to fair hearings. Turning to Section 101(a)(4), the dissent acknowledged that "This section obviously does not alter the established substantive rule of this Commonwealth which requires exhaustion of internal union remedies." Nonetheless, the dissent thought that the union's constitution transgressed Section 101(a)(4), which the dissent read as forbidding any labor organization to "delay the availability of such internal remedies for more than four months." (R. 105, J.S. 28).

Justice Jones dissented without opinion (R. 103, J.S. 26).

ARGUMENT

1. The appellate jurisdiction of this court does not extend to this action. The decision below does not declare any statute of the United States invalid, nor does it uphold the validity of any state statute in the face of a constitutional attack. 28 U.S.C. §§1257(1), (2). Accordingly, the appeal must be dismissed.

2. Treating the papers as an application for a writ of certiorari, the writ should be denied. The federal claim presented is patently frivolous, and was properly disposed of by the court below.

This is *not* a suit under the LMRDA, or under any other federal statute. Indeed, appellant's earlier suit in federal court was dismissed for failure to state a claim under federal law. *Mamula* v. *Local 1211, United Steelworkers*, 205 F. Supp. 915 (W.D.Pa. 1962). That decision was not appealed, and is a final determination of appellant's rights under federal law. The decision, moreover, is in accord with all the reported decisions on the question.[3]

This is, rather, a suit in state court grounded exclusively in state law. Many state courts have refrained from deciding internal union disputes until the parties have exhausted their remedies within the union. Appellant contends, however, that Congress, though it did not see fit in the LMRDA to regulate the conduct challenged here, nonetheless intended by Section 101(a)(4) to deprive state courts of their discretion to determine whether and when to entertain actions challenging such conduct under state law. According to appellant, state courts are now *compelled* to hear such cases once internal union remedies have been pursued for four months.

This contention—which would mark an extraordinary innovation in federal-state relations—is frivolous. The legislative history of Section 101(a)(4) is devoid of any suggestion that Congress meant to override state procedural requirements in state law actions. Indeed, to the contrary, those legislators who adverted to the question were explicit that Section 101(a)(4) was not to affect in any way state requirements of exhaustion of remedies.

Thus Senator Kennedy, the leading Senate conferee on the Act, said:

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[3] See e.g., the decisions cited in the district court's opinion, and *Hamilton* v. *Gunzan*, 199 F. Supp. 562 (S.D.N.Y. 1961).

> "Nor is it the intent or purpose of the provision to invalidate the considerable body of State and Federal Court decisions of many years' standing which require, or do not require, the exhaustion of internal remedies prior to Court intervention depending upon the reasonableness of such requirements in terms of the facts and circumstances of a particular case. So long as the union member is not prevented *by his union* from resorting to the Courts, the intent and purpose of the 'right to sue' provision is fulfilled, and any requirements which *the Court* may then impose in terms of pursuing reasonable remedies within the organization to redress violation of his union constitutional rights will not conflict with the statute." (105 Cong. Rec. 17899 (1959)) (emphasis supplied).

In the House, Congressman O'Hara made the same point:

> "It should be remembered that we are not, in [Section 101(a)(4)], giving union members the right to sue. They now possess that right under the common law of the States or not at all. We can only provide that *unions* shall not impair the right. *This does not affect the doctrine of exhaustion of remedies as applied by State courts and the States will continue to apply their own independent judgment on this matter.*" (105 Cong. Rec. 15689-90 (1959)) (emphasis supplied).[4]

Nor is it credible, in an area as sensitive and politically-charged as that of federal-state relations, that Congress, in the face of these statements, might have *sub silentio* shackled state courts in the conduct of exclusively state business. "It seems unlikely that Congress would so lightly sweep aside state rules of judicial administration." Cox, *Internal Affairs*

[4] See also "Analysis of the Labor-Reform Bill" by Representatives Thompson and Udall, 105 Cong. Rec. 15538-39 (1959): "the doctrine is one of State law and apparently is not affected by the statute."

of Labor Unions Under the Labor Reform Act of 1959, 58 Mich. L.Rev. 819, 840 (1960).[5] As the court below put it, "It is highly unlikely that Congress would attempt in such a cavalier manner to alter established state court rules relating to exhaustion of internal remedies" (R. 102, J.S. 25). And in the nearly five years since passage of the LMRDA not one state court has felt compelled by Section 101(a)(4) to modify its equitable exhaustion rule.[6]

Indeed, since Section 101(a)(4) is merely a restraint on the imposition of discipline by labor unions, and is not a limitation addressed to any courts, it would appear that even in suits under the LMRDA the federal courts retain their discretion to require pursuit of internal remedies beyond four months. See remarks of Senator Kennedy, *supra*; Cox, *supra*, 58 Mich. L. Rev. at 839-41; Hickey, *"The Bill of Rights of Union Members"* 48 Geo. L. J. 226, 254 (1959); Smith, *The Labor-Management Reporting and Disclosure Act of 1959*, 46 Va. L. Rev. 195, 206-07 (1960).

The jurisdictional statement, at pp. 15-16, lists four decisions which are alleged to be "contrary to and in direct conflict with" the decision below.[7] Manifestly, since all of these decisions are in suits in federal court to enforce rights granted by LMRDA, they could not conflict with the holding of the court below that Section 101(a)(4) does not af-

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[5] Appellant cites this article at page 12 of the jurisdictional statement, but misstates the position taken in the article.

[6] In *Kopke* v. *Rannev*, 16 Wisc. 2d 369, 114 N.W. 2d 485 (1962 cited at page 12 of the jurisdictional statement, the Supreme Court of Wisconsin referred to Section 101(a)(4) in a general discussion of the law on exhaustion of remedies, but there was no holding (as suggested by appellant) that that section "controls" state actions.

[7] *Sheridan* v. *United Bhd. of Carpenters*, 306 F. 2d 152 (3d Cir. 1962); *Parks* v. *Int'l Bhd. of Elec. Workers*, 314 F. 2d 886, 925 (4th Cir.), *cert. denied*, 372 U. S. 976 (1953). *Detroy* v. *American Guild of Variety Artists*, 286 F. 2d 75 (2d Cir.), *cert. denied* 366 U. S. 929 (1961), *Harris* v. *Int'l Longshoremen's Assn.*, 321 F. 2d 801, 805 (3d Cir. 1963).

fect the exhaustion of remedies requirements imposed by *state* courts in suits brought to enforce *state* law. Moreover, the discussions in these cases are *dicta* and, though not entirely clear, do not appear to view Section 101(a)(4) as *compelling* federal courts to entertain LMRDA actions after four months. Rather, the court below read them "as merely adopting for the federal courts an exhaustion of remedies rule *patterned upon* the proviso clause in Section 101(a)(4). Those cases do not mean that state courts must also adopt this exhaustion rule" (R. 103, J.S. 26; emphasis supplied).

CONCLUSION

For the reasons set forth above, the appeal must be dismissed for lack of jurisdiction, and, treating the papers as an application for a writ of certiorari, the writ should be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 327

NICHOLAS MAMULA,

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Appellees.

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

BRIEF IN OPPOSITION TO MOTION TO DISMISS

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ARGUMENT

I. The Appellate Jurisdiction of this Court Does Extend to this Action.

Appellees have ignored the cases cited in the Jurisdictional Statement, and the Petition below for reargument.

Appellees apparently misapprehend, misconstrue or refuse to recognize the basic constitutional and legal principles upon which this appeal is premised.

This appeal presumes that the Constitution of the United States and federally enacted laws, and rules implementing same, are the supreme of this land.

The Commerce Clause of the Constitution imposes the nation's confidence in Congress with respect to law and regulation pertinent to activities of our citizens, individually, collectively or corporately engaged therein. National trade unions are such activity (and to a great extent unions themselves brought about this recognition, for the purpose of avoiding more distasteful regional, state or local regulations of their activities).

While this same appellee elsewhere standing on its left foot argues with great vehemence the impropriety, unconstitutionality and illegality of state "right-to-work" laws, as treading upon an area properly preempted by Congress, it here leans on its right foot to urge the pre-eminence of a state rule which flaunts a specific federal statutory enactment.

Appellee's argument in effect says:

1. Section 101(a)(4) enjoins labor unions not to take more than four months to afford final review of a member's grievance, however

2. A labor union may ignore the mandate of Section 101(a)(4) by requiring further appeal steps beyond the four months, or by delaying decision for such time, and

3. Where the only court left open to enforce the member's right is a state court (because the federal courts have ingeniously divested themselves of jurisdiction in

intra-union discipline, however illegal, where office or candidacy "rights" are at issue, construing such important activities as being "political" and beneath the dignity of federal protection, ignoring the Congressional mandate that democracy in unionism is a matter of great public concern); the admittedly illegal provisions of labor union constitutions can be lawfully enforced by state court rules antedating the enactment of L. M. R. D. A.

Such argumentation is less than specious. It is inane; but bespeaks the immensurate and imaginative resourcefulness of appellee's counsel, who thus far have succeeded in so distorting the clear Congressional intent as to completely reverse same. The "key" to union democracy, in their hands, has all but locked the door to bar any democratic movement from entering the union halls.

"The Common Clause, though in terms a delegation of authority to Congress, traditionally has been read, in part, as a self-executing limitation on state activity"; *Southern Pac. Co. v. Arizona*, 325 U. S. 761, 769; *4 Letters and Other Writings of James Madison*, 14-15 (Lippincott ed. 1867); *Vol. 77, Harv. Law Rev.*, 1084, 1089.

The absolute necessity for uniformity of application of federal policy, particularly where, as here, expressly set out in the federal statute, in an area "within which the policy of the law is so dominated by the sweep of federal statutes that legal relations which they affect must be deemed governed by federal law having its source in those statutes rather than by local law" calls for a ruling herein; *Sola Elec. Co. v. Jefferson Elec. Co.*, 317 U. S. 173, 176; *Greenberg v. Panama Transp. Co.*, 185 F. S. 320, 324 (D. Mass., 1960); 61 Columb. Law Rev. 287 (1961); *Vol. 77 Harv. L. Rev.*, 1084, 1093.

II. A Very Substantial Question is Involved.

The semantic effectiveness of the dogmatic term "frivolous", as applied by Appellees to this appeal is revealing; for implicit in such condemnation is the realization that this appeal poses a threat of the greatest magnitude to the international union's self-anointed, self-perpetuating, anti-democratic oligarchy.

Are we to assume that the Congressional enactment was itself "frivolous"? Only with such assumption can the strained pragmatic logic of the motion to dismiss reflect reason.

Appellee's tender expression of concern for the possible embarrassment to state courts by a judicial determination herein contrary to the vacuous interpretation of this federal law by the state courts of Pennsylvania is simulated at best.

This Honorable Court, in an opinion by Mr. Justice Clark, aptly and cogently dismissed quite similar protestations in *Ker v. California*, 374 U. S. 23, 27:

> "Mapp sounded no death knell for our federalism; rather, it echoed the sentiment of Elkins v. United States, *supra*, at 221, that 'a healthy federalism depends upon the avoidance of needless conflict between state and federal courts' by itself urging that 'federal-state cooperation—under constitutional standards will be promoted, if only by recognition of their now mutual obligation to respect the same fundamental criteria in their approaches."

WHEREFORE, it is respectfully urged that the motion be denied, and the appeal be heard on its merits.

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